A

KUMPULAN LINGGI SDN BHD (LADANG BUKIT BADAK)

v.

B

THE NATIONAL UNION OF PLANTATION WORKERS

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
HASAN LAH JCA
JEFFREY TAN J
C [CIVIL APPEAL NO: J-04-71-2004]
7 APRIL 2009

ADMINSTRATIVE LAW: *Exercise of judicial functions - Judicial review - Appeal to set aside High Court order quashing award of*
D *Industrial Court - Failure by Industrial Court to deal with issue on jurisdiction - Whether constituted an error of law upon which judicial review may be granted - Exercise of discretion*

ADMINISTRATIVE LAW: *Judicial review - Judicial review*
E *proceedings - Appeal to set aside High Court order quashing award of Industrial Court - Failure by Industrial Court to deal with issue on jurisdiction - Whether constituted an error of law upon which judicial review may be granted - Exercise of discretion*

LABOUR LAW: *Industrial Court - Jurisdiction - Judicial review -*
F *Appeal to set aside High Court order quashing award of Industrial Court - Failure by Industrial Court to deal with issue on jurisdiction - Whether constituted an error of law upon which judicial review may be granted - Exercise of discretion*

G ***LABOUR LAW:*** *Industrial Court - Award - Judicial review - Appeal to set aside High Court order quashing award of Industrial Court - Failure by Industrial Court to deal with issue on jurisdiction - Whether constituted an error of law upon which judicial review may be granted - Exercise of discretion*

H

LABOUR LAW: *Trade union - Collective agreement - Dispute - Judicial review - Appeal to set aside High Court order quashing award of Industrial Court - Failure by Industrial Court to deal with issue on jurisdiction - Whether constituted an error of law upon which judicial*
I *review may be granted - Exercise of discretion*

The respondent/trade union, which had at all material times a collective agreement with the appellant/employer, approached the Industrial Court under s. 56 of the Industrial Relations Act 1967 ('Act') upon taking the view that the appellant had violated one of the terms of the agreement. In its pleaded case, the appellant put in issue the jurisdiction of the Industrial Court to deal with the complaint. The Industrial Court did not deal with the jurisdictional point at all and instead proceeded to dispose of the complaint on its merits. The respondent, being dissatisfied with the award, applied to the High Court to have it quashed in judicial review proceedings. The High Court acceded to that application, resulting in the present appeal by the appellant to have the High Court order set aside.

Held (dismissing the appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

(1) The appellant, having taken the jurisdictional point, was no doubt inviting the Industrial Court to make a ruling on that issue. Both the appellant and the respondent had a legitimate expectation that the Industrial Court would decide whether it had the jurisdiction to deal with that complaint under s. 56 of the Act. Once the Industrial Court failed to deal with that issue it in effect erred in law, and that error was a ground upon which judicial review may be granted. Of course, the remedy of judicial review is discretionary in nature and misconduct of an applicant is a relevant consideration to take into account in exercising discretion. However, in this case, the respondent did not misconduct itself in such a way to disentitle it to the relief claimed. All it did was to make the complaint for the violation of the collective agreement. It was the appellant who put jurisdiction in issue. If the Industrial Court had held that it had no jurisdiction that would have been the end of that. But that was not the case here. This was, therefore, a case in which none of the personal bars to granting the remedy were present. As for the judgment under appeal, there was no misdirection of the part of the judge; his decision was entirely correct. The appeal was, thus, without merit. (paras 7, 8, 9, 10 & 11)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Responden/kesatuan sekerja, yang mempunyai pada semua masa material suatu perjanjian kolektif dengan perayu/majikan, menjumpai Mahkamah Perusahaan di bawah s. 56 Akta Perhubungan
B Perusahaan 1967 ('Akta') setelah berpendapat bahawa perayu telah melanggar salah satu terma perjanjian itu. Dalam kesnya yang diplid, perayu mengemukakan isu bidang kuasa Mahkamah Perusahaan untuk membicara aduan itu. Mahkamah Perusahaan tidak mempedulikan perkara bidang kuasa itu dan sebaliknya
C meneruskan dengan penyelesaian aduan itu atas meritnya. Responden, berasa tidak puas hati dengan award itu, memohon ke Mahkamah Tinggi untuk membatalkannya dalam prosiding kajian semula kehakiman. Mahkamah Tinggi bersetuju dengan permohonan itu, mengakibatkan rayuan semasa oleh perayu untuk
D mengenepikan perintah Mahkamah Tinggi itu.

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

E **(1)** Perayu, setelah mengemukakan perkara bidang kuasa itu, telah tanpa ragu-ragu meminta Mahkamah Perusahaan untuk membuat suatu perintah atas isu itu. Kedua-dua perayu dan responden mempunyai harapan sah bahawa Mahkamah Perusahaan akan menentukan sama ada ia mempunyai bidang
F kuasa untuk membicara aduan itu di bawah s. 56 Akta. Setelah Mahkamah Perusahaan gagal untuk menentukan isu itu ia telah khilaf secara undang-undang, dan kekhilafan itu adalah satu alasan atas mana kajian semula kehakiman boleh dibenarkan. Semestinya, remedi kajian semula penghakiman
G bersifat mengikut budi bicara dan salah laku seseorang pemohon ialah pertimbangan yang relevan untuk diambil kira apablia menggunakan budi bicara. Walau bagaimanapun, dalam kes ini, responden tidak salah lakunya dirinya dalam mana-mana cara yang membuatkannya tidak berhak mendapat relif
H yang dituntut. Apa yang hanya dibuat olehnya ialah untuk membuat aduan mengenai pelanggaran perjanjian kolektif itu. Ia merupakan perayu yang telah meletakkan bidang kuasa sebagai isu. Jika Mahkamah Perusahaan telah memutuskan bahawa ia tidak ada bidang kuasa perkara itu akan berakhir sebegitu.
I Tetapi itu bukannya kes di sini. Ini adalah, oleh itu, suatu kes dalam mana tidak ada apa-apa rintangan terhadap membenarkan

remedi itu. Berkenaan penghakiman yang dirayukan, tiada apa-apa salah arahan yang dibuat oleh hakim; keputusan beliau adalah sepenuhnya betul. Rayuan ini adalah, oleh itu, tanpa merit.

Case(s) referred to:
AMZ Corporation Sdn Bhd v. Sye Ah Chai [1988] 1 LNS 209 ***(refd)***
Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1996] 4 CLJ 687 FC ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 56

For the appellant - A Ramadass; M/s Ramadass & Assoc
For the respondent - B Lobo; M/s Lobo & Assoc

[Appeal from High Court, Johor Bahru; Judicial Review No: 25-24-01]

Reported by Suresh Nathan

JUDGMENT

Gopal Sri Ram JCA:

[1] This is the judgment of the court.

[2] This appeal is directed against the order of the High Court quashing the award of the Industrial Court in judicial review proceedings. The background against which this appeal rests is as follows.

[3] The respondent is a trade union. At all material times it had a collective agreement with the appellant. A dispute arose about one of the terms of that agreement. The union took the view that the appellant employer had violated one of its terms. So it approached the Industrial Court under s. 56 of the Industrial Relations Act 1967 ('the Act'). In its pleaded case the appellant's employer put in issue the jurisdiction of the Industrial Court to deal with the complaint. And this is how it did it.

> Paragraph 7 of the Statement in Reply mentioned that the Company refers to Paragraph 7 of the Statement of Case and states that it had no previous knowledge of this letter. The Company however states that as the said letter to the Director-General of Industrial Relations contains various disputes as to

A facts, this matter cannot therefore be properly construed as a complaint of non-compliance. While Paragraph 9 of the Statement in Reply mentioned that the Company refers to Paragraph 9 of the Statement of Case and denies the contention contained therein and puts the Union to strict proof thereof. The Company avers
B and will so submit that the Union's complaint is not capable of being considered by this Honorable Court under Section 56(1) of the Industrial Relations Act 1967 and therefore ought to be dismissed.

[4] The Industrial Court in a brief award did not deal with the
C jurisdictional point at all. It instead proceeded to dispose of the complaint on its merits. It is plain that had the Industrial Court discussed the jurisdictional issue and decided it against the union that would have put the union to its choice of having the dispute resolved in accordance with one of the other mechanisms provided
D for in the Act. Because of the way in which the Industrial Court dealt with the matter this option was lost to the union.

[5] Returning to the facts, the union being dissatisfied with the award moved the High Court to have it quashed in judicial review
E proceedings. The High Court acceded to that application and the appellant's employer now moves this court in this appeal to have the order of the High Court set aside.

[6] The principal argument raised in support of the appeal is this. It is the union which in the first place made the complaint
F to the Industrial Court under s. 56 of the Act. The decision having gone against it, the act of the union in moving for judicial review constitutes an abuse of the Court's process. In any event the union approached the High Court with unclean hands. Given the circumstances of the case, and the remedy sought being
G discretionary in nature, the High Court should have dismissed the motion for review.

[7] In our view there is a short answer to the appellants' argument. It is to be found in the appellant's statement in reply
H delivered before the Industrial Court and already quoted earlier in the judgment. Having taken the jurisdiction point, the appellant no doubt was inviting the Industrial Court to make a ruling on that issue. Indeed we would go so far to say that both the employer and the union had a legitimate expectation that the Industrial
I Court would decide whether it had or did not have jurisdiction to deal with that complaint under s. 56 of the Act. Once the

Industrial Court failed to deal with that issue it in effect erred in law. It failed to ask itself the right question. That error, on the state of authorities that constitute the jurisprudence on this subject, is a ground upon which judicial review may be granted. See *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor* [1996] 4 CLJ 687.

[8] We of course accept that the remedy of judicial review is discretionary in nature and that misconduct of an applicant is a relevant consideration to take into account in exercising discretion. See *AMZ Corporation Sdn.Bhd. v. Sye Ah Chai* [1988] 1 LNS 209. The circumstances in which discretion may be exercised against the applicant are so varied that is neither possible nor useful to attempt to catalogue them here. Suffice to say that non disclosure of a material fact in making the application for leave is an example of a type of misconduct upon which discretion may be exercised against an applicant.

[9] But the principle contended for has no application to the facts of this case. The applicant did not misconduct itself in such a way to disentitle it to the relief claimed. All it did was to move the complaint for the violation of the collective agreement in question. It was the appellant employer who put jurisdiction in issue. If the Industrial Court had held that it had no jurisdiction that would have been an end of that. But that is not the case here. This is therefore a case in which none of the personal bars to granting the remedy were present.

[10] We have read and re-read the judgment under appeal. It has been very carefully written with a full discussion of the facts and the relevant authorities. We are unable to detect any misdirection on the part of the learned judge. Indeed, we are entirely in agreement with his decision and the reason given by him for it.

[11] For the reasons already given this appeal is without merit. It is dismissed. The appellant must pay the costs of this appeal to the respondent. We direct that the deposit in court be paid out to the respondent to account of its taxed costs.